

REMARKS

35 U.S.C. § 112, second paragraph

Claims 1, 5-7, 9-17, and 21-31 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the Office Action, the Examiner provides claim amendments that would overcome these rejections. Applicants have herein incorporated the recommendations of the Examiner substantially as presented in the Office Action. Reconsideration of the rejection under 35 U.S.C. § 112, second paragraph is respectfully requested.

35 U.S.C. § 103

In the Office Action, the Examiner rejects claims 1, 5-7, 9-17, and 21-31 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,852,211 issued to Dumpelman et al. (hereinafter "Dumpelman") in view of EP Patent No. 0 174 624 issued to Bott et al. (hereinafter "Bott") (together "Cited References"). Applicants respectfully traverse the rejection.

Applicant have amended the claims to clarify that the process for the recovery of an organic acid. In this regard, applicants have amended claim 1 and 17 to include a step for conducting a fermentation with an organic acid producing microorganism to produce a fermentation broth containing said organic acid and insolubles comprising all microbial biomass resulting from said fermentation with said organism and wherein said drying occurs without prior removal of said insolubles comprising said microbial biomass from said fermentation broth.

Applicants respectfully request reconsideration of the rejections based upon the Cited References. Certain basic considerations apply to obviousness

rejections. The Manual of Patent Examining Procedures ("MPEP") describes the following tenets of patent law which must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention and
- (D) Reasonable expectation of success is the standard with which obviousness is determined. *MPEP §2141*, citing *Hodosh v. Block Drug, Inc.*, 786 F.2d 1136, 1143 n.5, 229 U.S.P.Q 182, 187 n.5 (Fed. Cir. 1986).

Applicants respectfully submit that the Examiner has not presented a *prima facie* case of obviousness. For at least the reasons, that all the limitations of the claims, as amended, are not in the cited references, there is no motivation or suggestion in the prior art, and there was no reasonable expectation of success for the change in the processes of the Cited References.

All of the limitations of the claims must be present in the combination of references to reject the claims under 35 U.S.C. §103. Neither of the Cited References, however, disclose a process wherein the drying occurs without prior removal of the microbial biomass from the organic acid-containing fermentation broth. Therefore, an obviousness rejection is not complete. In addition, Dumpelman et al. teaches away from the filtering prior to crystallization by stating that the object of the invention is to permit in the simplest possible manner the conversion of the sodium salt of 2-keto-L-gulonic acid, which is present in an aqueous, non-purified fermentation broth, into free 2-keto-L-gulonic acid in alcoholic solution in high yield and with high purity.

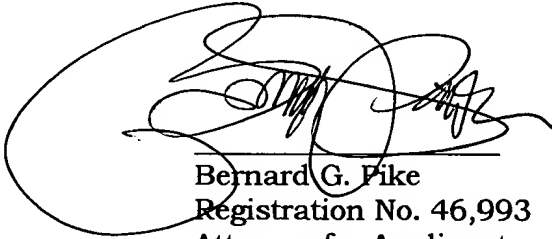
A reasonable expectation of success is required to have a *prima facie* case of obviousness. Applicants contend that one skilled in the art would have no reasonable expectation of success of producing an organic acid by drying the fermentation broth without prior filtration of biomass. This is truly a surprising result. As evidence of this, Dumpelman with filtering of the fermentation broth prior to spray drying calls his process "simplest possible manner" of producing the organic acid. However, the method of the subject application is clearly more simple. The solid biomass and the crystallized byproduct acid are both removed in the same filtration step. Therefore, an obviousness rejection is not appropriate.

As such, Applicants respectfully submit that the process as claimed is fully described, enabled, and not anticipated by the Cited References or any other references cited in the subject application. Reconsideration of the rejections is respectfully requested.

Conclusion

Applicants have made a diligent effort to fully respond to all the concerns and comments of the Examiner. Therefore, Applicants respectfully request that a timely Notice of Allowance be issued in the subject application. If the Examiner has any concerns regarding Applicants' present response, he is invited to contact Applicants' undersigned representative at the telephone number listed below so that those concerns may be expeditiously addressed.

Respectfully submitted,



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